

## **PROCEDURE**

# **EVALUATING DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION REQUIREMENTS**

**APRIL 1, 2003**

### **A. PURPOSE**

This document establishes policy and prescribes procedures for reviewers to use when evaluating the Disabled Veteran Business Enterprise (DVBE) Program Requirements responses to solicitations. These procedures are essential to the successful evaluation of all solicitation documents in determining the lowest responsive, responsible bidder meeting specifications. It prescribes roles and responsibilities for the overall management, currency, and delegation authority of this policy document. It promulgates statutory and regulatory requirements set forth in the Public Contract and Military and Veterans Codes, and the California Code of Regulations that established the DVBE Participation Program.

### **B. POLICY**

Solicitations generated by the Department of General Services – Procurement Division (DGS-PD) that include a DVBE participation requirement, will be reviewed and evaluated in a consistent manner in accordance with established procedures. The DVBE Program Requirements will be known hereinafter as “DVBE Requirements” and was formerly known as “Attachment 1.” The Department of General Services – Procurement Division (DGS-PD) requires the DVBE Requirements to be employed in solicitations as indicated in Appendix 1 of this document.

### **C. DEFINITIONS**

1. Disabled Veteran Business Enterprise (DVBE) – As used in this procedure, a DVBE is a supplier who meets all eligibility requirements set forth in the Military and Veterans Code, Section 999 and is currently certified by the Office of Small Business and DVBE Certification (OSDC).
2. Bid – As used in this procedure, a response by a supplier to a solicitation issued by the State.
3. Commercially Useful Function - California Code of Regulations, Title 2, § 1896.61(l):

The term "DVBE contractor, subcontractor or supplier" means any person or entity that satisfies the ownership (or management) and control requirements of Section 1896.61(f); is certified in accordance with Section 1896.70; and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function. A DVBE contractor, subcontractor or supplier is considered performing a commercially useful function when it meets the following criteria:

- (1) The business concern is: responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing or

supervising the work involved; and performing work that is normal for its business services and functions, and

- (2) The business concern is not further subcontracting a greater portion of the work than would be expected by normal industry practices.

#### **D. PROCEDURE:**

##### **1. GENERAL DESCRIPTION AND STATUTORY REQUIREMENTS**

The DVBE Participation Goal Program for state contracts was established in Public Contract Code (PCC) Section 10115 et seq., Military and Veterans Code Section 999 et seq. and the California Code of Regulations, Title 2 (2CCR) Section 1896.60 et seq.

The DVBE Program goal is to achieve 3% participation of all contracted dollars annually. Each department may select solicitations for requiring DVBE participation. The minimum DVBE participation percentage is 3% for each solicitation selected unless another percentage is specified in the solicitation document.

##### **2. ROLES AND RESPONSIBILITIES**

This section defines the various roles and responsibilities of designated PD functions and staff involved in the DVBE Requirements evaluation, implementation, and delegation authority and quality assurance process. These roles and responsibilities include, but are not limited to, all levels of management, professional buying staff, dispute resolution, small business and DVBE outreach and education and certification experts, and key management and staff from the delegation and resources, and, acquisition quality assurance programs. They include the coordination and participation of the State DVBE Advocate. Specifics follow:

- a. PD Management: PD Management will provide oversight for the successful outcome and evaluation of the DVBE Requirements document. PD Management will be the final approving authority for all DVBE Requirements documents and will facilitate a yearly review of the document with the DVBE Policy Team.
- b. DVBE Policy Team: The Team will be responsible for the successful implementation of the DVBE Requirements document. This includes, but is not limited to: the development and approval of the DVBE Requirements document, implementing the review procedure, monitoring the review procedure on a bi-monthly basis through team meetings and reporting to management as required. They will discuss and address issues, concerns and possible updates. For issues that require an immediate action, PD Management will provide assistance to the DVBE Policy Team to determine a resolution. The Team will consist of, but not be limited to, staff from the Offices of Small Business and DVBE Outreach and Education, Certification, PD's Professional Buyers (Acquisitions Section), Dispute Resolution Unit, and the Purchasing Authority and Quality Assurance Programs.
- c. Office of Small Business and DVBE Outreach and Education: Members will be responsible for state agency/supplier training and outreach, monitoring successful DVBE goal attainment compliance, the review and approval of all Business

Utilization Plans (BUP) received from suppliers, Trade and Focus Publications requests, and is the designated office responsible for the updating of the DVBE Requirements document. In addition, the Office of Small Business and DVBE Outreach and Education Section will coordinate to ensure that the State DVBE Advocate from the California Department of Veterans Affairs will be involved as an active participant in the review and analysis of DVBE contracting programs and to make specific recommendations for improvement.

- d. Professional Buying Staff (Acquisitions Section): All professional buying staff will be responsible to interpret compliance of their respective solicitation responses based on the Review Procedure paragraph outlined in Section 3 of this document. They will send a contract notification letter to all participating DVBE subcontractors for the contract award. Also, the designated "staff lead," in coordination with the DVBE Policy Team and DVBE Outreach and Education staff, will ensure this policy document is current and consistent with the California DVBE Program Requirements and available to appropriate PD staff.
- e. Responsible Post Award Contractor Participation: The Acquisitions and Contracts Section will request proof of a contractor's DVBE participation, in the form of copies of payments or a signed affidavit from the DVBE prior to contract close. This verification post-award process will provide participation proof of the DVBE and eliminate, to the extent possible, any misuse of certified DVBEs.
- f. Dispute Resolution: Will provide input, guidance, and assistance relative to their primary mission and the formulation of policy and procedures regarding the effective implementation of this policy document.
- g. Office of Small Business and DVBE Certification (OSDC): Will provide input, guidance, and assistance relative to their primary mission and the formulation of policy and procedures regarding the effective implementation of this policy document.
- h. Purchasing Authority and Quality Assurance Programs: Will provide input, guidance, and assistance relative to their primary mission and the formulation of policy and procedures regarding the effective implementation and delegation authority of this policy document.

### 3. REVIEW PROCEDURE

The DVBE review procedure acts as the official policy document that outlines how the DVBE Requirements will be interpreted. As set forth in statute, a supplier has three options to meet the requirements of DVBE requirements. They are:

Option A meets the commitment through DVBE participation by obtaining a minimum of a 3% goal attainment.

Option B provides acceptable documentation that a supplier has made a sincere effort to seek out certified disabled veteran businesses perform in a "commercially useful function" for successful completion of a contract.

Option C allows a supplier to submit an annual business utilization plan (BUP), which will satisfy all goal attainment activities. DVBE BUPs apply only to solicitations for goods and information (IT) goods and services.

NOTE: A supplier bidding to the State of California, whether they are opting to comply with Option A, B or C, must submit the appropriate documentation to support their effort. The supplier must choose from one of the three options listed above to be considered compliant with the DVBE requirements. If any part of the mandatory documentation is not received by the bid opening date and time, the bid will be deemed non-compliant to the administrative requirements, and will be rejected.

- a. Option A – Commitment: Commitment to achieve a minimum of a 3% goal by using a certified disabled veteran business in a “commercially useful function”. The supplier must fill in the commitment information on the Documentation of Disabled Veteran Business Enterprise Program Requirements (STD Form 840), Section A.

Review Requirement: To the extent possible, the buying professional must verify any documented commitment with a disabled veteran business. They will verify DVBE certification through the OSDC via the website. The website location is [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus). Select the “Certified Firm Inquiry Services” and choose the Standard Query option. Choose the “Display Firm Certification Application Status and Information” link. Document the file with a print out of the successful search results.

- b. Option B – Good Faith Effort (GFE): The bidder provides acceptable documentation to show a sincere effort was made to seek out certified disabled veteran businesses to operate in a “commercially useful function” for successful completion of a contract. This consists of five distinct steps, which must be completed and documented on the STD 840 form, Sections A and B. The supplier must complete all five (5) distinct steps to be in compliance with the GFE as described by Option B. Failure to complete or provide any of the required documentation will cause a bid to be deemed non-compliant with Option B, and ineligible for award.

Review Requirement:

Step 1 – Supplier must document contact with the Awarding Department (contracting official listed on the solicitation document).

Step 2 – Supplier must document contact with State, Federal and Local Organizations. The state agency contact must be with the OSDC either by phone or querying the online database (<http://www.pd.dgs.ca.gov/smbus>). The federal agency contact must be achieved via the internet through Pro-Net ([www.pro-net.sba.gov](http://www.pro-net.sba.gov)). The supplier must list at least one local agency contact (refer to the DVBE Resource Packet for information).

Step 3 – Unless waived, the supplier must advertise in at least two (2) publications, one (1) each in a trade paper and a DVBE focus paper unless the publication is considered a dual purpose in which case one (1) ad is acceptable. This ad must be specific to the solicitation in question and include: company name; contact name; address; telephone and facsimile numbers (if available); e-mail address (if available); the state’s solicitation number(s); the goods and/or services for which the state is soliciting; the location of the work to be performed and the state’s bid(s) due date and/or the due date for receiving DVBE responses.

The supplier must completely document the publication name(s) on the STD Form 840 (side 2) and provide copies of the advertisement(s) with their bid response. NOTE: If all of the nine content requirements are not included in the ad(s) and/or

copies are not provided with the supplier's bid, the bid may be deemed non-compliant, and ineligible for award.

Step 4 – The supplier must solicit at least two DVBEs to participate in the solicitation being advertised. The written solicitation to the DVBEs must include company name; contact name; address; phone and facsimile numbers (if available); return e-mail address (if available); the state's solicitation number; goods and/or services for which the state is soliciting; location of work and the state's bid due date and/or supplier's due date for receiving DVBE responses. The supplier must provide a copy of each solicitation sent by letter, fax or e-mail and confirmation of transmittal or delivery. The supplier must document the contacts on the STD Form 840 (Side 1). The bid will be considered non-responsive and ineligible for award if the supplier fails to provide all appropriate copies.

Step 5 – The supplier must document on STD Form 840 (Side 1), Section A whether a firm was selected for participation, and if not selected, then also document the reason for non-selection. Review all attached additional pages for documenting consideration of all other DVBE's contacted.

- c. Option C – The DVBE Business Utilization Plan (BUP): Permits bidders to submit an approved DVBE BUP to satisfy DVBE participation solicitation requirements of 3%. DVBE BUP's apply only to solicitations for goods and information technology (IT) goods and services. DVBE BUP's are a company's commitment to expend a minimum of 3% of its total statewide contract dollars with DVBEs. This percentage is based on all of its contracts in the state, not just those with State of California agencies.

Review Requirement: DVBE BUP's must be submitted to and approved by the Department of General Services, Procurement Division prior to bid due date. The review and approval of a submitted DVBE BUP will be the responsibility of the Office of Small Business and DVBE Outreach and Education. Bidders choosing this option must properly complete and submit the STD Form 840 (Side 1) and include a copy of its approval letter with the bid. Failure to submit these documents shall render their bid non-responsive, and it will be rejected.

#### 4. PRE-AWARD GUIDELINES

- a. Solicitation Creation Options: DVBE requirements include three default requirements that may be changed as described in the exceptions and suggested language section below.
  - i) Exception 1: Increases the participation percentage requirements above 3%. Suggested language should dictate the required participation for the solicitation.
  - ii) Exception 2: Identifies an "awarding department" contact other than the buyer to identify DVBEs GFE, Step 1. Suggested language to identify DVBE's for compliance as required in the DVBE requirements, Option B "Good Faith Effort," Step 1, the awarding department contact is (name) at (phone).
  - iii) Exception 3: Waives the advertising requirement, Option B – Good Faith Effort (GFE), Step 3, by using PIN Phrase 252 which reads:

"The State has established goals for Disabled Veteran Business Enterprises participating in state contracts. Please review the DVBE requirements. Bidders must complete and return all the appropriate exhibit pages in order for the bid to

be considered responsive. For the purposes of this bid, the advertising requirements shown in the DVBE requirements are waived due to time constraints.”

- b. DVBE Requirements Submittal Evaluation: The Evaluation Checklist - (attached) was developed to assist buyers with evaluating submittals against the revised requirements.

Materiality of deviations can be determined only on a case-by-case basis, given the specific bidding scenario. “Commercially useful function” must also be determined only on a case-by-case basis. For assistance with these types of evaluation determinations, please see the PD Office of Small Business and DVBE Outreach and Education. If you need additional assistance, you may request the item(s) be placed on the weekly Legal Meeting Agenda (Tuesdays at 1:30 p.m.) for discussion. Clear the request with your supervisor/manager, then send an e-mail message to the PD’s Dispute Resolution Manager.

If your evaluated proposed awardee claims DVBE participation (Option A), you must request a written agreement between the prime bidder and its DVBE subcontractor(s) prior to contract award to confirm the bidder’s commitment.

## 5. POST-AWARD GUIDELINES

- a. DVBE Participation Proof: The Acquisition and Contracts Section will request proof of a contractor’s DVBE participation, in the form of copies of payments or a signed affidavit from the DVBE prior to contract close.
- b. DVBE Substitutions: Prime bidders may request substitution of any named DVBE pursuant to 2CCR § 1896.64(d).
- c. Disputes and Protests: Contact PD’s Dispute Resolution Unit.
- d. General Compliance Issues or Problems: Contact the Contracting Officer.
- e. Fraud: Contact PD’s OSDC.

## 6. PURCHASING PROFESSIONAL’S EVALUATION CHECKLIST

An Evaluation Checklist – DVBE Requirements, see Appendix 1, has been revised to assist the buying staff by providing a checklist of all pertinent DVBE requirements. As buyers review each individual bid response for their respective project(s), this document will act as a reminder of the requirements/procedures and provide a tool to document their records accordingly.

## 7. CONTACT INFORMATION

Program Questions and Primary Contact for DVBE requirements submission evaluation assistance will be directed to the contract administrator listed on the bid solicitation document.

For general questions and guidance, contact the DGS-PD, Office of Small Business and DVBE Outreach and Education - DVBE Program Services.

**E. APPENDICES:**

1. Appendix 1: Evaluation Checklist – DVBE Requirements

**F. AUTHORITY AND REFERENCES:**

1. Statutory: Public Contract and Military and Veterans Codes
2. Regulatory: California Code of Regulations





## APPENDIX 1

## Evaluation Checklist – DVBE Requirements (REV. 4-1-2003)

Solicitation No. \_\_\_\_\_ Bidder Name \_\_\_\_\_  
 Bid Due Date \_\_\_\_\_ Bid Amount \$ \_\_\_\_\_

<input type="checkbox"/> Option A: DVBE CONTRACT PARTICIPATION	Notes
<input type="checkbox"/> Submitted STD 840 or other comparable documentation	
<input type="checkbox"/> Section A – Listed at least one DVBE for participation	
<input type="checkbox"/> DVBE is California-certified	
<input type="checkbox"/> Listed specific goods and/or services that are “commercially useful” and relevant to the contract	
<input type="checkbox"/> Listed the estimated dollar amount and/or percentage equal to 3% (If this is a line item award and the participation claimed for the selected line items does not meet the full 3% requirement; then a GFE must have been submitted.)	
<input type="checkbox"/> POST-BID / PRE-AWARD: Submitted the requested written agreement to confirm claimed participation with the DVBE subcontractor/supplier(s)	Confirmation required only if this bidder is the apparent proposed awardee

<input type="checkbox"/> Option B: GOOD FAITH EFFORT	Notes
<input type="checkbox"/> Submitted STD 840, STD 840A and/or other comparable documentation	
<input type="checkbox"/> Section A (Step 4) – Listed at least two contacted DVBEs	
<input type="checkbox"/> DVBEs are California-certified	
<input type="checkbox"/> DVBEs provide goods and/or services related to the state’s solicitation	
<input type="checkbox"/> Attached copies of invitations to listed DVBEs	
<input type="checkbox"/> Invitations meet content requirements (Contact info.; solicitation no.; goods/services bidding; work location; bid due date)	
<input type="checkbox"/> Attached copies of delivery confirmations for invitations	
<input type="checkbox"/> (Step 5) Listed acceptable business reasons for non-selection	
<input type="checkbox"/> Section B (Step 1) – Contacted Awarding Department	
<input type="checkbox"/> (Step 2) – Contacted Other State – Certification Office	
<input type="checkbox"/> (Step 2) – Searched Federal Database – Pro-Net	
<input type="checkbox"/> (Step 2) – Contacted at least one Local DVBE Organization	
<input type="checkbox"/> (Step 3) – Advertisement(s) information included	Waived? <input type="checkbox"/> Yes <input type="checkbox"/> No
<input type="checkbox"/> Advertisements were published in one trade and one DVBE focus paper <u>OR</u> in one dual-purpose publication	
<input type="checkbox"/> Attached copies of advertisement(s)	
<input type="checkbox"/> Advertisement(s) meets timeframe requirements (After release of solicitation and at least 7 days prior to the bid due date)	
<input type="checkbox"/> Advertisement(s) meets content requirements (Company name; Contact name: address; telephone and facsimile numbers (if applicable); e-mail address (if available); solicitation number; goods/services bidding; work location; bid due date)	

<input type="checkbox"/> Option C: BUSINESS UTILIZATION PLAN	Notes
<input type="checkbox"/> Submitted STD 840 or other indication of option	
<input type="checkbox"/> Attached a copy of its Business Utilization Plan Approval letter from DGS	

BUYERS MAY DETERMINE IMMATERIAL DEVIATIONS ON A CASE-BY-CASE BASIS ONLY,  
 AFTER EVALUATING THE BID IN QUESTION AGAINST THE BIDDING SCENARIO CONTEXT.

COMPLIANT TO DVBE Requirements:

☐

Yes

☐

No